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Ex. 15

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210

AUG 5 1994

MEMORANDUM FOR THOMAS HALL
Division of Consumer Affairs

FROM: SUSAN SHERMAN SGS
Project Attorney

SUBJECT: Witnesses for Indoor Air Quality Hearing

The following persons have been invited by OSHA to present testimony at the informal hearings on OSHA's proposed rule on Indoor Air Quality that will begin in Washington, D. C. on September 20, 1994.

Henry Beale
Microeconomic Applications Inc.
4354 Warren Street, N.W.
Washington, D.C. 20016

Mr. Beale is an economist who will offer testimony on OSHA's Regulatory Impact Analysis.

Neil Benowitz, M. D.
Building 30, Fifth Floor
San Francisco General Hospital
1001 Potrero Avenue
San Francisco, California 94110

Dr. Benowitz is chairman of the Department of Clinical Pharmacology, University of California at San Francisco. He will offer testimony on the use of cotinine as a specific marker of environmental tobacco smoke exposure. He will also establish that cotinine is a valid quantitative marker of the level of environmental tobacco smoke exposure.

Dr. Daniel Ford, M. D.
2024 East Monument Street
Suite 2-600
Baltimore, Maryland 21205-2223

Dr. Ford is a medical doctor and epidemiologist, holding joint appointments in the Department of Epidemiology and the Department of Health Policy and Management at Johns Hopkins University as well as serving on the medical staff of Johns Hopkins Hospital.

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Dr. Ford will discuss the use of epidemiological data in risk assessment. He will also discuss the epidemiology of passive tobacco smoke in relation to lung cancer and heart disease.

Professor Stanton Glantz
Division of Cardiology
Box 0124, Room 1196M
505 Parnassus Avenue
University of California
San Francisco, California 94143

Dr. Glantz will address the development of heart disease in relation to exposure to environmental tobacco smoke. He will also testify on the impact of the tobacco provisions of the proposed to the restaurant industry.

S. Katharine Hammond
Department of Family and Community Medicine
University of Massachusetts Medical Center
Worcester, Massachusetts

Dr. Hammond will testify about her studies documenting nicotine exposure from environmental tobacco smoke.

Michael Hodgson, M. D.
University of Connecticut Health Center
MC 6105
263 Farmington Avenue
Farmington, Conn. 06030

Dr. Hodgson will testify about the adverse health effects associated with exposure to poor indoor air from a clinician's point of view.

Peggy Jenkins
California Air Resources Board
Research Division
Post Office Box 2815
Sacramento, California 95812

Dr. Jenkins will testify about her work assessing exposure to environmental tobacco smoke.

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Hal Levin & Associates
2548 Empire Grade
Santa Cruz, California 95060

Mr. Levin is an expert on indoor air quality and will address the benefits that can be expected to be realized if the proposal is implemented.

Joseph W. Lstiburek
Building Science Corporation
273 Russett Road
Chestnut Hill, Mass. 02167

Mr. Lstiburek is a professional engineer with extensive experience in diagnosing building related problems. He will testify on various aspects of the indoor air quality proposal including the importance of bioaerosol control and the control of relative humidity.

Philip R. Morey
Clayton Environmental Associates
1729 Christopher Lane
Norristown, Pa. 19403-3365

Dr. Morey will discuss microbiological contamination of indoor environments and resulting disease of the inhabitants.

Dr. Wayne Ott
Scientist
Atmospheric Research and Exposure Assessment Laboratory
U. S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

Currently on assignment at:

Department of Statistics
Sequoia Hall 126
Stanford University
Stanford, California 94305

Dr. Ott will testify about a model developed to estimate tobacco smoke concentrations in the air from smoking.

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Jonathan Michael Samet, M.D.
Chairman
Department of Epidemiology
School of Hygiene and Public Health
The Johns Hopkins University
615 North Wolfe Street, Suite 6039
Baltimore, Maryland 21205-2179

Dr. Samet will testify about the adverse health effects associated with poor indoor air quality.

William A. Turner
The H. L. Turner Group, Inc.
R. R. 1
Box 535A
Harrison, Maine 04040

Mr. Turner is a ventilation expert. He will testify on various aspects of the indoor air quality proposal including the necessity to provide adequate employee information and training and the inadequacy of general dilution ventilation to control exposure to carcinogens.

Dr. Lance Wallace
Scientist
Atmospheric Research and Exposure Assessment Laboratory
U. S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

Currently located at:

Environmental Photographic Interpretation Center

Office of Research and Development
166 Bicher Road Building
Bint Hill Farm Station
Warrenton, Virginia 22186

Dr. Wallace will testify about the results of the TEAM studies (total exposure assessment methodology) as they relate to indoor air quality, focussing on VOC, pesticide, and particle exposure. Dr. Wallace will also address EPA studies of indoor air quality in large buildings.

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A. Judson Wells
5 Ingleton Circle
Kennett Square, Penn. 19348

Mr. Wells will testify on risk assessments on lung cancer and heart disease associated with exposure to environmental tobacco smoke. He will also discuss the importance of confounding factors such as misclassification in evaluating the risk from exposure to environmental tobacco smoke.

James Woods
Virginia Polytechnical Institute and State University
2990 Telestar Court
Falls Church, Virginia 22042

Mr. Woods will testify on the cost savings to be realized by having an effective indoor air quality program. He will also testify about the indoor air quality compliance program.

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Testimony Presented By Michael Silverstein, M.D., M.P.H.
Director of Policy, Occupational Safety and Health Administration
Indoor Air Quality, Proposed Rule
Public Hearing, 9/20/94
Washington, DC

Good morning. My name is Michael Silverstein. I am a physician, and the Director of Policy at the Occupational Safety and Health Administration (OSHA). I thank you all for your presence here today. I would like to summarize and clarify some of the major issues raised in OSHA's notice of proposed rulemaking, published in the Federal Register on April 5, 1994.

These hearings are a crucial part of the process by which the Occupational Safety and Health Administration aims to deliver on its obligation to protect Americans at work. The aspect of that mandate which is at issue today is an important, indeed an intimate one--safeguarding the quality of the air in the workplace.

Regulating the quality of workplace air is a major responsibility which will have large and diverse consequences. We care a great deal about getting it right. This is why we welcome these hearings. As a catalyst to the accumulation of expertise that must improve and inform OSHA's final regulation, we have published a proposed rule to serve as the starting point for our discussions. Let me emphasize that this proposed regulation is a starting point, and not a fixed position. We enter these hearings with no rigid preconceptions about the right way to ensure that America's workers have safe and healthful air to breathe. We expect to use the information developed during these hearings to assure that our final rule is effective, feasible, and reasonable. If changes are necessary, we will make them. That's why we're doing this.

We are determined to keep an open mind during these hearings, to listen to testimony carefully, and to consider whether there are better ways to proceed than are in our initial proposal. Yet while we remain open and flexible on the means, we are also determined to take whatever action the evidence supports to protect the health of workers who are involuntarily exposed to dangerous airborne chemicals on the job. OSHA's decision to develop rules on indoor air quality--including rules affecting environmental tobacco smoke--flows directly from our duty, our statutory responsibility, to protect the right of American

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workers to a safe and healthy workplace. This proposed regulation does not flow from shifting political priorities or some new interpretation of OSHA's mandate. Indeed, the effort was launched under a different party's stewardship of the Labor Department.

Other speakers will be covering the major issues more broadly and deeply, but I would like to touch briefly on a few important points that have informed our decision to initiate this rulemaking. While environmental tobacco smoke is only one among many substances that can compromise the quality of air in the workplace, it has been the object of a disproportionate amount of discussion--some of which has not been well informed--surrounding this rule-making process.

Secondhand tobacco smoke contains over 4,000 chemical compounds, including such poisons and irritants as carbon monoxide, formaldehyde, ammonia, nitrogen oxides, and hydrogen cyanide. It also contains at least 43 known or suspected carcinogens, including benzene, 2-naphthylamine, 4-aminobiphenyl, nickel, and polonium-210. If the source of these airborne chemicals were production machinery or raw materials, ironically, few would question the legitimacy, indeed the urgency, of establishing rules to protect workers from exposure. The fact that this particular airborne toxin originates with people legitimately exercising their right to smoke is surely significant, and throughout this process we must take care not to needlessly infringe on the rights of people who choose to smoke. But in a workplace setting, for OSHA, the more crucial fact is that at present, many millions of people are exposed to smoke unwillingly. According to reports published by the Environmental Protection Agency, the National Research Council, and the Department of Health and Human Services, many of the damaging elements in tobacco smoke, in fact, are more concentrated in so-called "sidestream" smoke than in the smoke that smokers take into their own lungs.

There is a growing body of evidence showing that exposure to environmental smoke on the job causes disease, including lung cancer, in healthy nonsmokers. Restaurant workers, for example, may take in substantially more smoke than someone living with a smoker and as much benzo(a)pyrene, a carcinogen, as active smokers. In California, waitresses have the highest death rate of any group of female workers. Waitresses die of lung cancer at four times the average rate for women who work, and they die of heart disease at

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two and a half times the average rate. OSHA has conducted a thorough review of the scientific data to support its preliminary conclusion that there is significant risk from contaminated indoor air at the worksite. Much of that evidence will be presented and discussed in the course of the hearing.

The accumulating evidence has had a major impact on public opinion. Most Americans now believe that secondhand smoke is dangerous, and favor measures to protect them from this risk. An ABC News/Washington Post poll found that 78 percent of the public believed second-hand smoke to be a health risk; a separate Gallup poll found that by the same margin, 78 percent, respondents viewed environmental smoke as "very" or "somewhat" harmful. And in a CBS News/New York Times poll, 67 percent supported an outright ban on smoking in all public places--a far tougher measure than OSHA envisages. While we do not make rules on the basis of opinion polls, it is noteworthy that our proposal is, if anything, less aggressive than mainstream opinion would warrant.

Even with an expeditious completion of this regulatory process, the federal government will end up a follower, not a leader, in the effort to protect working men and women from the hazards of secondhand smoke. States and localities, as well as private companies, have forged ahead without waiting for federal action. California, Maryland, Utah, and other states have taken aggressive steps on smoking. By restricting smoking in most public and private workplaces, these states go beyond what OSHA proposes. Many companies have established entirely smoke-free workplaces on their own initiative, including Federal Express, Greyhound, Honeywell, Ralston-Purina, and Turner Broadcasting. An even larger number of companies, such as General Dynamic, Adidas USA, Boeing, Coors, General Mills, and Motorola, have made substantial moves towards protecting non-smoking workers from second-hand smoke without banning all smoking.

Unfortunately, the issue of how to balance the rights of smokers against the imperative of breathable air in the workplace has been clouded by misunderstandings and misinformationl. Allow me to clarify a few points on the proposed regulation.

Does OSHA intend to curb the right of Americans to smoke inside their own homes? No. OSHA does not propose to regulate smoking or indoor air

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quality in private homes, now or in the future. The provisions of the proposed rule cover only workplaces. The final rule will in no way challenge an individual's ability to smoke in a private home.

Similar questions have arisen concerning the right to smoke in vehicles, including private cars. OSHA does not intend its proposal to apply to private vehicles, and indeed does not have authority to regulate smoking in cars and trucks used privately, or for commuting to work. Nor does OSHA intend to limit smoking in any type of work vehicle when the only employees present are smokers, or to apply air-quality regulations to taxis or limousines.

Finally, some have expressed uncertainty over the extent to which the standard will preempt state and local regulation of smoking and other indoor air quality issues. We recognize that many state and local governments have enacted laws to ensure indoor air quality. Many of these laws are of general applicability and do not conflict with the proposed OSHA standard.

It is also important to note here that we are eager for comments on a number of issues regarding the implementation of this regulation. Let me mention two issues on which additional expertise and perspectives would be particularly useful.

The first is the question of when and how the standard will take effect. Our current proposal is that all provisions of the final standard be implemented within 14 months of its publication. We have been told that some affected businesses will need additional time to prepare for implementation. We invite testimony about the most appropriate implementation schedule, including comments on whether start-up dates should vary by provision, or by type of establishment.

Second, we need to determine how best to equip building owners and tenants to jointly prepare themselves to meet the rule's requirements. Some have suggested, for example, that it might be appropriate to relate the dates at which employers must comply with some indoor air quality provisions to the renewal dates of their commercial leases, in order that the lessor and lessee may negotiate the financial impact of these provisions. We would appreciate the thoughts of witnesses on this issue as well.

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My remarks have concentrated on issues related to environmental tobacco smoke not because this is the most important aspect of the rulemaking, but because it has attracted the most pre-hearing attention. I felt it appropriate and useful to clarify several issues and to dispel possible misconceptions in order to facilitate the most effective use of the time we have available for these hearings.

But allow me to emphasize: We are not discussing a tobacco rule, but a workplace air quality rule. Tobacco smoke is only one of many airborne hazards we intend to address with this broad indoor air quality standard. The proposed standard would require specific measures to reduce worker exposure to other air contaminants emitted from point sources, to microbial contamination, to cleaning and maintenance chemicals, pesticides, and other hazardous agents. It would also require more general measures to assure the adequacy of building systems, including heating, ventilation, and air conditioning systems, in order to reduce the incidence of such serious illnesses as asthma or Legionnaire's disease.

Let me conclude my remarks, and open the hearings, by emphasizing that OSHA's proposed regulation is not meant to end the conversation on how to protect workers, but rather to begin it. I would like to extend our thanks to all of those who have already given their reactions to the proposed rule, and encourage those who still have comments to come forward. This process is precisely what we meant to trigger--an extended discussion among experts and stakeholders, leading to a better-informed, better-targeted, more efficient regulation.

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U.S. Department of Labor

Office of Administrative Law Judges
[illegible] Street, N.W.
Washington, D.C. [illegible]

PRE-HEARING GUIDELINES

To: PARTICIPANTS IN THE OSHA HEARING ON THE PROPOSED STANDARD ON INDOOR AIR QUALITY (Docket No. H-122)

Your participation in the public hearing on OSHA's proposed standard for Indoor Air Quality (59 FR 15968) is both welcome and appreciated. The following guidelines for the hearing are issued, setting forth procedures to be followed and other relevant information on this rulemaking.

As stated in the Federal Register notice of June 14, 1994 (59 FR 30560), the hearing on OSHA's proposed Indoor Air Quality standard will begin on Tuesday, September 20, 1994. The location and the initial starting time, however, will differ from that notice: the hearing will be held initially in the Andrew W. Mellon Auditorium (formerly known as the Departmental Auditorium) between 12th and 13th Streets on Constitution Avenue, NW, Washington, D. C. On the first day, the hearing will begin at 10:00 a.m. On subsequent days, the starting time for the hearing will be 9:30 a.m.

Each hearing day will end when the scheduled testimony and questions for that day have been completed. Currently, OSHA anticipates that the hearing will run from September 20th through the week of December 5th, 1994, with a one-week recess and the observance of three national holidays. Any change in time or location of the hearing will be announced during the course of the hearing.

It is important that participants understand the nature of the hearing, which is being conducted in accordance with Section 6(b)(3) of the OSH Act and the procedural regulations in 29 CFR Part 1911. Since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The procedural rules that govern the hearing and these guidelines are intended to assure fairness and due process and also to facilitate the development of a clear, accurate and complete record. These rules and guidelines will not be interpreted in a manner that might thwart that development. Thus, questions of

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Questions should be as brief as possible and should be designed to clarify a presentation or elicit information that is within the competence or expertise of the witness. To prevent unnecessary duplication, questions that have been asked and responded to by a witness should not be repeated. Questions should not be argumentative. Questioners will not be permitted to use the question period to present their own testimony and views on issues.

After all participants have completed their questioning, if a party still has important and relevant questions that have not been asked, the party may request permission from the Administrative Law Judge to ask additional questions. Permission may be granted based on the time available, the witness schedule, and OSHA's need to develop a complete record.

It is useful for participants to understand the role of the Administrative Law Judge in the hearing process. Since the hearing is primarily for information gathering, the Administrative Law Judge is responsible for assuring that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge will not make recommendations about OSHA's proposed rule. The powers of the Administrative Law Judge are set forth at 29 C.F.R. §1911.16 and §1911.17.

At the close of the hearing, the Administrative Law Judge will establish a post-hearing comment period for those participants who have filed Notices of Intention to Appear. This period will be divided into two segments: the first is for the submission of additional information and data relevant to the proceeding; the second is for the submission of final written comments, summations and briefs. Currently, it is anticipated that the designated period for the submission of additional information and data will be the first 60 days after the close of the hearing; the designated period for the submission of comments, summations and briefs will be the 30 days after that. (No reply briefs are to be filed.) At the close of the post-hearing comment period, the hearing record will be closed and certified by the Administrative Law Judge to the Assistant Secretary of Labor for Occupational Safety and Health.

Date: SEP 2 1994

Nahum Litt
Chief Judge

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
September 20, 1994	OSHA	Michael Silverstein
	OSHA	John Martonik
	OSHA	Panel: Dr. Michael Silverstein John Martonik S. El-Mekawi E. Stern H. Woodcock L. Loo J. Repace D. Janes D. Collia S. Ahir L. Hathon K. Stevanus
September 21, 1994	OSHA	Panel [See above]
	OSHA	Stanton A. Glantz, PhD
September 22, 1994	Hal Levin & Associates	Hal Levin
	Building Science Corporation	Joseph Lstiburek
	The Johns Hopkins University	Jonathan Michael Samet
September 23, 1994		Judson Wells
	Virginia Polytechnical Institute and State University	James D. Woods

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
September 26, 1994	San Francisco General Hospital	Neil L. Benowitz
	Stanford University	Wayne Ott, PhD
	California Air Resources Board	Peggy Jenkins
September 27, 1994	California Air Resources Board	Peggy Jenkins
	The H.L. Turner Group, Inc.	William Turner
	University of Massachusetts Medical Center	Sally Katharine Hammond
September 28, 1994	NIOSH	
		Dr. Curt R. Mauer Dr. James Pirkle
September 29, 1994	Association of Flight Attendants	Christopher Witkowski Alice Evans Mary O'Shea
	American Medical Association	Randolph D. Smoak, Jr. Bill Borwegan Diane Carlson Cathy Sarri
	Service Employees International Union	Bill Borweger Diane Carlson Cathy Sarri Phil Thornton Margaret Jackson

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
September 30, 1994	Building Owners and Management Association	Jim Dinegar
	Environmental Protection Agency	Lance Wallace
October 11, 1994	Business Council on Indoor Air	Paul Cammer R. Bruce Dickson
	American Mining Congress	Mark G. Ellis
	Workplace & Safety Council	Jan Collins Sheldon Rabinovitz Win Froelich Tracy Stegeman
	Bakery, Confectionary & Tobacco Workers	Raymond Scannell
October 12, 1994	Responsible Industry for Sound Environment	Edward Allen James
	Clean Air Device Manufacturers	Dennis Lauchner Brian Boender Steven Zitin Scott Moore Art Melvor Scott Moore Dick Allegrati Heidi Oas
	International Sanitary Supply Association	William Balek
	American Insulation Manufacturers Association	Ken Mentzer

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
October 13, 1994	Clayton Environmental Consultants	Phillip Morey
	Organization Resources Counsellors	Ann Brockhaus
	Carpet and Rug Institute	Ron VanGelderen
	Halliwell Engineering Associates	Jack Halliwell
	Dow Chemical	Richard Olson Susan Barrett
October 14, 1994		Anne Gariazzo
		Susan C. Watkins
	Healthy Buildings International	Gray Robertson
		Mark Diamond
October 24, 1994	Maryland Group Against Smokers' Pollution	John O'Hara
		Eddy Giel
	Nevada Resort Association	Wayne Edward Mehl
		Edward W. Gillis
	National Restaurant Association	William P. Fisher W.W. Naylor James Britt
	San Francisco Hotel Association	Bob Jacobs
	University of Denver	Horace A. Divine

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
October 24, 1994	Kentucky Chamber of Commerce	John Brazel Chuck Zimber
October 25, 1994	ASHRAE	Michael Hodgson, M.D.
	American Legion	William Detweiler Steve Robertson James B. Hubbard
	Bowling Proprietors' Association	Alan Douglas Rick Bourgeois
		Jackie Wells
	Japanese Assistance Network	Dave Karracker
	Price-Waterhouse	Glen Galfond Jay Tansing
		Lila Hunter
		Jay Schrand
October 26, 1994	National Licensed Beverage Association	James C. Simpson, III
		William R. Sprague Philip A. Craig Ron Seng Penny Laswell
		R.E. Foy
		James D. Ferguson

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
October 27, 1994	Aviation West	Diane Michalek
		Luke S. Lambeth
		Darryl Dunigan
	Standard Commercial Tobacco Company	A. Winniett Peters
	Flue Cured Tobacco	Arnold Hamm
		Will Clark
		Patricia Jones
		Brenda Isley
		Nancy Strader
		Lucy Carter
		Jean Moore
October 28, 1994	Rockingham Tobacco Growers Association	Oliver Parker
	National Smokers Alliance Panel	William J. Althaus Oscar J. Coffey, Jr. Louise T. Lindblom
	Dinwiddie County	Dan M. Upton
	Oregon Smokers' Rights	Mark Holan
	American Smokers' Alliance	Sara R. Mahler
	Virginia Group to Alleviate Smoking in Public, Inc.	Ann Morrow Donley

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
October 31, 1994	American Medical Association	Dr. Randolph D. Smoak, Jr. Dr. Ron Davis Dr. Tom Houston Mr. Mike Zarski
		William Pfeffer, Jr.
		Birgitte Peterson
November 1, 1994	United Smokers Association	
	United Smokers Journal	L. Susan Allsop
	Veterans of Foreign Wars	John Dodge Jim Naughton
		Steven Dorobiala
		Faye De. Everhart
	Dresco Belting	Norman K. Dresser
	National Coalition for Homeless Veterans	Richard Fitzpatrick
	Employment Research Services	Donna Thompson
	National Tech Systems, Inc.	Mel Parsell
	Hair Now	Rita Underwood
	McCarty Hull, Inc.	William McCarty, Jr.
		Frank Barnes

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
November 2, 1994	National Vietnam Veterans Coalition	J. Thomas Burch
	ASHRAE	Michael Hodgson, M.D.
	Environmental Employees Collectively Organized	Dr. J. William Hirzy
	Ergotec Association	Bert Dumpe
	American Association of Occupational Health Nurses	Geraldine Williamson
November 3, 1994	Association of State & Territorial Health Officials	Susan S. Addis, MPH, MURS
	University of Newcastle Upon Tyne	Jeffrey R. Idle
	GD Package Machinery Incorporated	Robert G. Williams, Jr.
		J.D. Lee
November 4, 1994		Dr. Helen B. Hubert
	Mintie Corporation	Wayne Hansen
	International Counsel of Shopping Centers	Al Colon
		Judith Adele Plotkin
November 14, 1994	Exeter Health Information Services	John Robert Ashford

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
November 15, 1994	Environmental Health Resources	Maurice E. LeVois
	Center for Environmental Health and Human Toxcology	Raphael Witorsch
	Philips Seafood Restaurants	Paul R. Wall
	Baltimore Area Convention and Visitors Association	Wayne Chappell
November 16, 1994	United Air Specialists, Inc.	Raymond E. Warrick, Jr.
	Statistical & Computing Services	Anthony Springall
	Stanford University	Paul Switzer
November 17, 1994	Environ	Thomas Starr
	Layard Associates	Maxwell W. Layard
	Telaire Systems, Inc.	Mike Schell

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
November 18, 1994	Environmental Dynamics Group	F.C. Wiser, III
	Massachusetts Institute of Technology	Robert J. McCunney
	Florida Air Conditioning and Contractors Association	H. Deane Ellis
	National Energy Management Institute	Alexander J. Willman Vincent Panvini Bruce Lantrip Bob Martinez
November 21, 1994		Steve Shapiro
	Air Quality Engineering	
	Hamlin & Harris Inc.	Michael K. Harris
	Pace, Inc.	Lon Loken
	Matric Manufacturing, Inc.	Richard A. Bisca Matthew Chapiewski
	Cassady Safety & Health Services	Melvin E. Cassady Stefan Wawzyniecki, Jr.
November 22, 1994		
	Ronnell Company, Inc.	Ronald A. Tamol
	TriData	Philip Schaeman Patricia Frazier
	United Auto Workers	Frank Mirer Andrea K. Taylor Steve Shepard
	Johnson Controls	Sal Agnello George Janu

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
November 29, 1994	Purafil	Christopher O. Muller
	W.B.R. Engineering, Inc.	Bill Rossnagel
	Ecolab	Charles R. McDuff
	Science Reg. Services International	John A. Todhunter
	Chemical Specialties Manufacturing Association	Ralph Engel John DiFrazi Doug Fratz
	National Paint & Coatings Association	Whitney Long Stacie Lissette
	National Pest Control Association	Michael Katz Robert M. Rosenberg
November 30, 1994	Pathway Diagnostics, Inc.	Edward Light
	Gobbell Hays Partners, Inc.	Steve M. Hays
	McMullen Strategic Group	Samuel P. McMullen Amy Halley
	Nevada State Senator	Leonard V. Nevin
	Greater Reno-Sparks Chamber of Commerce	David Howard
December 2, 1994	Signal Environmental, Inc.	Ellen V. Sigal James R. Bailey Gregory A. Wulchin E. Donald Elliott
	National Air Traffic Controllers Association	Barry Krasner Michael Pinto
	Pamela P. Gardner, AIA	Pamela P. Gardner Michael J. Purtell

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
December 5, 1994	Summit National Bank	Kevin Corrigan
	UPF Corporation and Aegis	Jack R. Pfeffer W. Curtis White James Roberts
		W. Kip Viscusi
	Sheetmetal and Air Conditioning Contractors	Thomas James Meighen Thomas J. Soles, Jr.
		W. Kip Viscusi
December 6, 1994	International Facility Management Association	Richard Cooper Francis M. Gallo Louis Tong
	Ocean Aire Products, Inc.	Wm. T. "Bill" Williams, Jr. Bill Barker William J. Converse Angus L. McLean, Jr.
	National Council Chain Restaurants	Terrie M. Dort
	National Economic Research Associates	Albert L. Nichols
December 7, 1994	Procedure -- No witnesses	
December 12, 1994	Department of the Air Force	Major Jon T. O'Neal Major Mike Mader
	National Parking Association	Brett Harwood

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
December 13, 1994	National Association of Home Builders	Regina C.B. Solomon
	American Federation of Teachers	Joel Packer Kara Reed Robert Scarry Darryl Alexander
December 14, 1994	Travel Unlimited	Jim Gatherum
	Building and Construction Trades Department	Brad Sant John Barry George T. Macaluso Mike Andrews Victoria Bor
	Sheraton Inner Harbor Hotel, Baltimore	Michael Whipple
December 15, 1994	Roth Associates, Inc.	H. Daniel Roth
December 16, 1994	AFSCME	Carolyn D. Bland-Bowles Marilyn Kessler Alice Thompson
	Challenger Air Travel	Sharman Reecher Catherine Smith
		Alan Hedge
January 4, 1995	Health Policy Center	Gio Batta Gori
January 5, 1995	Oak Ridge National Laboratory	Roger A. Jenkins
		Dr. James Bridges
January 6, 1995		A. Greenberg
	University of Arizona	Mark Van Ert

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
January 9, 1995	National Center for Environmental Health Strategies	Mary Lamielle
	National Realty Committee	Edwin N. Sidman Roger Platt E. Donald Elliott
	Printing Industries of America	Larry Bennett
		Senator Michael Dmitrich
		Greg Shank
	Ravenia Court Travel	Joan Rutger
January 10, 1995	Institutional and Municipal Parking Congress	David L. Ivey Marie Witmer Kim Jackson David Fox
	New York Public Employee Federation	Jonathan Rosen Joan Shepard Vince DiGulio
		Philip Witorsch
January 11, 1995	Holcomb Environmental Services	Larry Holcomb
	Price-Waterhouse for San Francisco Hotel Association	Glen Galford Jay Tansing
January 12, 1995	Consultants in Toxicology	Gordon W. Newell

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
January 13, 1995	American Federation of Government Employees	Howard Egerman
	Microeconomic Applications	Henry B.R. Beale
	American Federation of Government Employees	David J. Schlein Kirby Biggs
	Powell Manufacturing Company	Tom Pharr
	American Sightseeing International	Joe King
	Technacool, Inc.	Robert Edgar
January 17, 1995	R.J. Reynolds	Christopher R.E. Coggins Michael W. Ogden Paul R. Nelson Stephen B. Sears Hoy R. Bohanon, Jr.
January 18, 1995	R.J. Reynolds	Christopher R. E. Coggins Michael W. Ogden Paul R. Nelson Stephen B. Sears Hoy R. Bohanon, Jr.
January 19, 1995	R.J. Reynolds	Christopher R. E. Coggins Michael W. Ogden Paul R. Nelson Stephen B. Sears Hoy R. Bohanon, Jr.
		Alan Hedge

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
January 20, 1995	AFL-CIO	Rex Tingle Margaret Seminario
	National Association of Industrial and Office Properties	Ronnie E. Duncan Jocelyn R. Hong Robert D. Landis
	Vermont Business Coalition	William Gillam, Jr.
January 23, 1995		Daniel E. Ford
January 24, 1995	Systems Applications International	Stan Greenfield
	AIHA	John Tiffany William Kerbel Aaron Trippler
January 30, 1995	South Georgia Mill Works, Inc.	M. Carallon
	Metal Works Corp.	M. Ingallinera
	Genessee Manufacturing Co.	Terry cicotte
	Crestwood Funeral Home	Joe Aubrey
	Adfirm of Houston, Inc.	Cynthia Crum
	Dibrill Brothers, Inc.	Norma Lutz
	Denny's Applicance	Alfredo Ramirez
	Glauber's Sports & Hardware	Joe Glauber
	Touch of Class	Jill Evangelista
	Carrollton of Williamston	Robert Gary Vernon, Jr.

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
January 31, 1995	Speer Cushion	Ruth Cole Dusenbury
	Griffin & Company	A.T. (Tom) Van Etten
	Royal Printing Company	Don Capps
	Dearduff Chevrolet/Pontiac	Justin Dearduff
	Gator Gun and Knife Store	Donney Presutti
	Rivera Funeral Home	Matthew Rivera
February 1, 1995	Abrams Moving Company	Arthur Abrams
	Mohrlange Manufacturing	Jade Lammers
	Layton Perry Funeral Home	Jason Pierce
	Sioux Merchant Patrol, Inc.	Grayce Winger
	WABCO	Julie Reimer
	Subway Sandwich	Bradley Adams
	Winter Bell	Rick Lewis
February 2, 1995	Cactus Jack's Casino	Steve Browne
	Brengle Sales and Service	Matthew Swanson
	Builders Supply	Eleanor Lee Saufley
	Clinch Tight Corporation	George Staples

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
February 3, 1995		Philip Peterson
	Super Pumper	Vern Lisford
	Carr Scarborough Microbid	Gerald Marshall
	Imperial NAPA	Bob Mendenhall
	Music City Auto Parts Care Products	Margie Ronson
	Kent Lounge, Inc.	Peter Karanghen
	Motel Sleepers, Inc.	Joe Callahan
	State Representative for Tennessee	Eugene Davidson
February 6, 1995	DJI Liquor Store	Donald Azar
	Diamond Steam Cleaning, Inc.	Gordon Bryan
	Properties 2000	Sandra McCafferty
	Young & Associates	J. Page DuBois
	Tee Jay's Manufacturing	Murphy Heird
	Representative District 21	Hugh Webster
	Gus' Getaway	Gus Harams
	Tilghman Chevrolet	Pete Tilghman, Jr.
	Pickup Truck Accessories	Moody Hughes

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
February 7, 1995	Baggott Insurance	William Baggott
	Argo Industries	Gail Veseley
	Mintana Mills	Bob Berkner
	Everette Insurance Agency Inc.	Lin Boyd
		Darrell Lauer
	Lookout Valley Tool & Machine	Jerry Walls
	Quaker Sales Corporation	Calvin Overdorff
	Beubien & Company	Gordon Beubien
	P&K Auto Body, Inc.	George Chemacki
February 8, 1995	Philadelphia Flatware, Inc.	Edward Slaven
	Dahl Ford of Davenport	Vinje Dahl
	Lee Dee Distributing	Robert Hale
	AA Electrical Service	Nathan Anderson
	Metro Airport & Limo Service	Brian Divenaz
	Southern Billiards, Inc.	Cindy Gilmer
	Christiansen Implement, Co.	Joey Christiansen
	Filter Care, Inc.	Harley Sackett
	Carpenters Shoppe	Ernie Otten

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
February 9, 1995	Big Red Liquor	Tammy Dobrovolny
	Farm Credit Service	Stan Carver
	Hanes S.Y. Vending	Mary Hanes
	21st Century Vending	Nicholas Marino
	Howell's Inc.	Phil Howell
	AGR Industrial Supply	Trent Burroughs
February 10, 1995	McBride's Inc.	Warren Wild
	Stewart's Truck Equipment, Inc.	Jerry Stewart
	Point to Point	Karol Brown
	Webb Industries	Kenneth Webb
	Alternative Labor Source, Inc.	Kandace Brown Pullin
February 21, 1995	C&J Electric Supply	Karen Wyant
	Broadway Machine	Linda Huggard
	United Tire Sales, Inc.	Willie Malcom
	Coleman-Hammons	Margie Barrett
	Elco Electric	Paul Philbrick
	Sandberg Implement Co.	Kevin Sandberg
	Sioux Empire Hobbies, Inc.	Tim Urban
	Kendall-Collison, Inc.	Robert Collison
	Dahlquist Realty	Marge Dahlquist
	Cinderella Cleaners	Frank Walker

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
February 22, 1995	Jim Baily's Custom Machine	Jimmy Bailey
	Ladders Unlimited & Supply Inc.	Richard Baldin
	Henry's Auto Repair Shop	Henry H. Ford
	CTC Trucking & Repair	Lee Ann Hutchins
	Mik-All Machine Company, Inc.	Charles Allen, Sr.
February 23, 1995	Almeda Equipment Company	Kelly Philbrick
	Proffitt Lumber Company	Katherine Proffitt
	Jim's Auto Salvage	Cindy Dempsey
	E.H. Brink	Dick Adelman
	Port Express of Savannah, Inc.	Pat Yates
February 24, 1995	Fargo Transmission	Merritt Carlson
	Southern Fluid Power Company, Inc.	Lorraine VanVekoven
	Dothan Instant Printing	Lucy Welejski
	Synthetics International	Karen Christiansen
	EEEMCO, Inc.	Ronald Vines
	Destiny Industries	Audrey Weeks
	Rocky Mountain Supply, Inc.	Todd Sargeant

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
February 27, 1995	Beatties Hitch Center	Robert Burnett
	Collins Chevrolet	Garland Burge
	Commercial Business Brokers	Chris Fanguy
	Associates Automotive Service	Keith Careathers
	Weeks & Associates Insurance	James Wayne Weeks
February 28, 1995	A.I.R. Corporation	Victoria Brooks
	Montana Tavern Association	Marie Durkee
	American Vending Company	Douglas Jackson Kay Jackson
	Kramer Funeral Home	David Kramer
	Allen Realty Company	Earl Allen
March 1, 1995	Elcam Tool & Die	John Buerk
	Henard Metal Fabricators, Inc.	Morris Henard
	Glenn Everett Consultants	Glen Bondurant
		Marsha Lowry
	BJA's Guns and Surplus	Bobbie Alicie
March 2, 1995	Pro-Rental Management	Pro-Rental Management
	Jim's Service Center	James Mathews
		Owen Pass
	Allison Wholesale	Jimmy Allison

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
March 3, 1995	David's Automotive	David Hicks
		Richard Kunkel
	Montgomery Printing Company	James Montgomery
	Industrial Steel Fabricators, Inc.	Tammy Kelley
	Cathie's Hair Care Center	Cathie Kinsey
	Berkshire Electric Cable	Kenneth Snella
	Metric Fasteners Corporation	Leo DeJong
	Gun Shop	Amanda Nedlose
	The Drive-In	Murray Augenstein
	Joy's Beauty Shop	Joy Mullins Stafford
March 10, 1995	U.S. Environmental Protection Agency	Steve Bayard
March 13, 1995	Midwood Gun Shop	Mark Hodroff
	Grantham Insurance	Gaines Grantham
	Loveland Cleaners	Mike Flaim Steve Flaim
	Jim Thomas Funeral Home	Dow Wilson
	Farner Bachen Wholesale Company	Clyde Slatterly
	Travel Agency	Carmen Delayncera
	Pelican State Wholesle	David Waller

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WITNESSES TESTIFYING AT OSHA'S PUBLIC HEARING ON THE AGENCY'S PROPOSED RULE ON INDOOR AIR QUALITY H-122		
DATE	**COMPANY**	**WITNESS**
March 13, 1995		Marlene Schroeder

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U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

In re	
PARTICIPANTS IN THE OSHA HEARING ON THE PROPOSED STANDARD ON INDOOR AIR QUALITY	Case No. 95-OSH-1
OSHA DOCKET NO. H-122 OALJ DOCKET 95-OSH-1	

NOTICE

Thank you for participating in the public hearing on OSHA's proposed standard for Indoor Air Quality. As you know, the hearing was a long and informative one, beginning on September 20, 1994 and concluding on March 13, 1995, with several short interim recesses.

Post Hearing Comments and Briefs

Some of you may not have been at the hearing on the day it concluded. Pursuant to the provisions of 29 CFR Section 1911.16, I have set the following post hearing comment and briefing periods:

The post hearing comment period will remain open until July 3, 1995 for the receipt of written information and additional data. Such information would include answers to questions you were asked at the hearing by the OSHA panel or by others in the audience, additional scientific evidence, and recommendations and supporting reasons which you believe to be relevant to the subject of the hearing.

During the post hearing brief period, which will close on September 11, 1995, the record will remain open for the receipt of position statements, briefs, recommendations and rebuttal of material that has been submitted during the post hearing comment period.

Anyone who has filed a timely Notice of Intention to Appear is eligible to file post hearing comments and briefs. It is neither necessary nor desirable to submit information as a post hearing comment which is already in the record.

Post hearing comments and briefs should be labelled as such and sent in quadruplicate to the Docket Office, Docket No. H-122, Room N-2624, U. S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N. W. , Washington, D.C. 20210.

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Transcript Corrections

A brief review of the transcripts from this proceeding indicates that there are some reporting mistakes included in the transcripts. This is inevitable in proceedings such as these.

The Rules of Procedure for Promulgating . . . Occupational Safety and Health Standards (29 CFR 1911.15(b)(3)) require that the hearing shall be reported verbatim. Those testifying at the hearing should examine a transcript of their own testimony (or cross examination, as the case may be) for reporting errors. Any errors shall be called to my attention, with a motion to correct.

Copies of motions to correct shall be sent by the party wishing to correct the transcript to: Judge Vittone, Susan Sherman, the Docket Office, and the person with whom the dialogue containing the error took place. These motions must be made by the close of the first post hearing comment period, July 3, 1995. Replies to motions to correct must be filed by July 24, 1995 and sent to those listed in the previous sentence.

This procedure shall only be used when there is a reporting mistake, such as wrongly identifying the speaker, inadvertently deleting the word "not" from a sentence, etc. Inartfully phrased or erroneous answers may not be corrected using the procedure outlined here--these things were actually said and therefore it would be improper to claim they were a typographical error. While inartfully phrased or erroneous answers cannot be remedied by correcting the transcript, they may be addressed in post hearing comments.

JOHN M. VITTONE
Acting Chief Judge

JMV/kat

Dated: April 25, 1995

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9-100000

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

Charles E. Adkins, CIH, Director
Directorate of Technical Support
USDOL-OSHA
Room N-3453
200 Constitution Ave, N.W.
Washington, D.C. 20210
September 13, 1994

OSHA Docket
Docket Number H-122
USDOL-OSHA
200 Constitution Ave, N.W.
Room N-2625
Washington, D.C. 20210

Dear OSHA:

This docket submission represents a significant milestone in the Occupational Safety and Health Administration's rulemaking process. The number 100,000 represents a major deviation in the responses that normally constitute the rulemaking record upon which OSHA bases its regulatory decisions. Throughout the history of the OSHA regulatory process, the number of comments have remained below 1,000 with some exceptions. The exceptions were as many as 3,000 to 4,000 comments such as were submitted in response to the Bloodborne Pathogens proposed regulation.

The vast majority of submissions to this docket file were documents of one page in length, however, there were some significant submissions that consisted of 15,000 thousand pages or more. The logistics of entering the submissions into the official docket was basically the same. That is a one page submission was given a docket number just as the 15,000 page submission. The difference was that the lengthy submissions with appendices were given an appendix number that followed the docket number. The one page submissions required the same degree of handling and filing as the submissions that were multiple pages in length.

The Notice of proposed rulemaking was published on April 5, 1994 and comments were to be filed by June 20, 1994. The comment period was extended to August 13 due to public request. Submissions began to arrive at the Docket Office shortly after the Federal Register Publication. Near the end of the original comment closing date, the volume of submissions dramatically increased and it became necessary to seek additional assistance and implement new techniques to handle the flow of material in an efficient manner.

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Some of the submissions contained language and material other than comments to be included as responses to an OSHA rulemaking process. A limited number of responses contained material such as ashes and cigarette butts. Others contained vulgar and sometimes threatening language. This made it necessary to conduct special training for the staff handling the incoming mail material. Special classes with representatives from the Postal Inspectors office as well as representatives from the DOL Security office conducted awareness training for all staff members and contractors that were the first to handle and open the mail.

Other logistic problems surfaced during the processing of this mass mailing activity. A significant number of the submissions were on paper other than standard 8.5 X 11 inch paper. Most of these were smaller than standard paper and created a unique handling problem. The impact of this problem was minimized by making a decision to handle all of the non-standard size submission at the same time and not mix them with the standard size documents. A proposed solution to this logistics problem is to require all future submissions to be on standard 8.5 X 11 inch bond paper.

Another logistics problem that was amplified due to the volume of mail coming in was that some submission did not contain the original and three copies as requested in the Federal Register notification. Submissions that did not contain sufficient copies were photo copied by the staff opening the mail. This additional time consuming process significantly increased the time necessary to process each document. All submissions were considered to be valid submissions regardless of the number of copies and/or the completeness of the submission.

The Proposed Regulation for Indoor Air Quality marked the first time that OSHA gave the option of submitting an original copy and a floppy disk with the information included in a Word Perfect file. Several submissions contained the information including a floppy disk, however this process must be reviewed before continued use. Two of the floppy disks submitted were contaminated with a virus that was detected by virus detection programs. The organizations that submitted the virus contaminated floppy disk were notified as to the condition of their computer system. An undetected virus on a disk submitted in response to rulemaking could have devastating effect on the entire OSHA computer system.

The magnitude of the responses submitted as a result of the Federal Register publication announcing the proposed regulation was one of an organized effort by organizations with the idea that volume was important. Throughout the history of OSHA rulemaking, the information requested has been information of substance and proper consideration was given to that information during the standard preparation. The rulemaking process has been a

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collection and consideration of scientific information and decisions were made on that basis and not on the basis of the number of comments received. Knowledgeable participants in the rulemaking process have known this for years and have not made attempts to influence the decision process through the public opinion process.

Major tobacco related organizations communicated with an unknown number of constituents with an interest in the second hand smoke issue. Letters such as the one in attachment "A" provided the public with instructions as to filing comments as well as suggested wording to be use when filing. A good number of the responses in the docket reflect the suggestion made in the letter of transmittal.

In addition, the National Smokers Alliance sent out forms to be returned to the Indoor Air Docket. The attachment with the forms, attachment "B" contained suggested wording to be used as well as a request for a contribution for response verification. The instruction in this mailing implied that the rulemaking comment process was a vote counting exercise. The insinuation that the rulemaking process is one of voting is entirely wrong and misleading. The Federal Register announcement clearly request information of substance and not just a response of "for" or "against" the rulemaking. The forms with this mailing were approximately 4 inches wide and 10 inches long and used carbonless type paper to make up the original and four copies as required by OSHA. More than 20,000 of the responses were of this type

The influx of mail addressed to docket H-122 made it necessary to implement new procedures to satisfy the legal requirements of rulemaking. Assistance from every OSHA office in Washington, D. C was requested and obtained. In addition, temporary help was obtained via the contract approach. Every step of the docketing process was supplemented so that the process could be completed prior to the closing of the post hearing comment period. Each and every person that participated in this process did so in a professional manner with a sincere desire to assist in meeting the requirements of the rulemaking process.

The number of comments submitted required an unusual and unplanned obligation of financial resources. The hours of staff overtime was precedent setting for the Docket Office. In addition the additional contractor support created a significant impact on the planned budget for the Docket Office. Major changes in plans were required in order to meet the requirements of the rulemaking procedure.

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The magnitude of the H-122 docket impacted the entire rulemaking docketing process. Staff were diverted from other activities to assist in solving the H-122 impact. Other docket activities were delayed from time to time due to the H-122 impact.

Throughout the entire process the staff remained dedicated to complete the project with the same degree of professionalism and confidence that is customary and expected from the Docket Office. There was never a hint of a compromise of the high quality and reliability that is the trademark of the OSHA Docket procedures.

This docket submission has defined some of the unusual situations that came up during the handling of the H-122 Docket. It is also a document to recognize the many dedicated professionals that help the agency survive the onslaught of mail that came in regarding the Proposed Standard On Indoor Air Quality. The dedication and professionalism was exemplary and sincere thank you for a job well done is given with this document.

Sincerely,

CHARLES E. ADKINS
Director
Directorate of Technical Support

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Original
Received 11/22/94
Jmv

Ex. 135

PHILIP MORRIS
MANAGEMENT CORP.
120 PARK AVENUE, NEW YORK, N.Y. 10017-5592 · TELEPHONE (212) 880-5000

November 22, 1994

Honorable John Vittone
Administrative Law Judge
U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20021-8002

Re: Hearing on OSHA's Proposed Rulemaking on Indoor Air Quality -- Philip Morris USA (Docket #51); Constangy, Brooks & Smith (Docket #74)

Dear Judge Vittone:

We are writing on behalf of Philip Morris USA ("Philip Morris") and its above-retained OSHA counsel concerning the administrative hearings on OSHA's Proposed Rule on Indoor Air Quality ("Proposed Rule"), 59 F.R. 15968, April 5, 1994. Based upon the concerns addressed in this letter, we have made the decision not to testify at the hearings, and therefore, will not appear as scheduled on December 1, 1994.

Our two primary concerns are as follows: (1) the participation of plaintiffs' product liability counsel to further their personal and financial interests has distorted a legitimate administrative hearing (Section I infra); and (2) the inclusion of two well-known anti-tobacco activists who are not OSHA employees but serve in an "official" capacity on the OSHA panel (Section II infra) makes it clear that the proceedings are anything but objective and fair -- despite the Secretary of Labor's and OSHA officials' pledges at the outset of the hearing.

I.

On September 20, 1991, OSHA promulgated a Request for Information ("RFI") on Indoor Air Quality, 56 F.R. 47892. At the time this RFI was published, Philip Morris dedicated its best efforts to work within the administrative framework of OSHA's regulatory process to develop a full and complete factual record regarding indoor air quality and indoor smoking. Philip Morris

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followed through on its commitment, filing an extensive written submission in response to the RFI and again filing an exhaustive written submission and summaries of proposed testimony in response to OSHA's Notice of Proposed Rulemaking on Indoor Air Quality.

We were pleased when Secretary of Labor Robert M. Reich and Assistant Secretary of Labor Joseph A. Dear both spoke of the need to develop a sound factual basis for the Proposed Rule on Indoor Air Quality.[1] Similarly, OSHA's Acting Director of Health Standards, John Martonik, emphasized OSHA's interest, and indeed the public's interest, in developing a fair, accurate, objective and complete administrative record regarding the indoor air rulemaking.[2] Dr. Michael Silverstein, OSHA's Director of Policy, further embraced these sentiments on behalf of OSHA.[3]

---

1 "Let me emphasize that this proposed regulation is a starting point, and not a fixed position. We enter these hearings with no rigid preconceptions . . ." Assistant Secretary of Labor Joseph Dear, OSHA Press Release, September 19, 1994. "We are going to invite comment on this rule and we will take these comments into full consideration in drafting a final rule." Secretary of Labor Robert Reich, Department of Labor Press Conference, March 25, 1994.

2 "The purpose of this public hearing is to fully develop a clear, accurate and complete rulemaking record upon which the final standard will be based."

"The importance of the public participation phase of this rulemaking proceeding cannot be over-emphasized. The regulation which we will be discussing over the next several weeks is still in the proposal stage. It should not be considered to be OSHA's 'final' determination or position on the issues involved." OSHA's Opening Statement, September 20, 1994.

3 "Let me emphasize that this proposed regulation is a starting point, and not a fixed position. We enter these hearings with no rigid preconceptions. . . ."

"We are determined to keep an open mind during these hearings, to listen to testimony carefully, and to consider whether there are better ways to proceed than are in our initial proposal." Testimony presented by Michael Silverstein, M.D., M.P.H., Director of Policy, Occupational Safety and Health Administration, Indoor Air Quality Proposed Rule, Public Hearing, September 20, 1994, Washington, D.C.

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We believe Your Honor has made a sincere and diligent effort to conduct a fair and impartial hearing, which we acknowledge and appreciate. However, given the lack of rules of evidence and other procedural safeguards under administrative law, plaintiffs' product liability counsel[4] who have lawsuits for monetary damages pending against Philip Morris and other entities within the tobacco industry[5] have undertaken efforts to misuse the

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[4] Mr. Ron Motley, of Ness, Motley, Loadholt, Richardson & Poole, Charleston, South Carolina, first appeared at the hearings on October 28 (Trans. 4203); Richard Daynard, Tobacco Products Liability Project, Boston, Massachusetts, first appeared at the hearings on November 3 (Trans. 5147); J.D. Lee, of the Offices of J.D. Lee, Knoxville, Tennessee, first appeared at the hearings on November 3 (Trans. 5342); Marcia Finkelstein and Michael Gertler, of Gertler, Gertler & Vincent, New Orleans, Louisiana, first appeared at the hearings on November 16 (Trans. 6398).

[5] Cases in which Mr. Ron Motley is appearing as counsel for plaintiffs include:

- Butler v. Philip Morris Incorporated, et al., Case No. 94-5-53, Circuit Court, Second Judicial District, Jones County, Mississippi. Environmental tobacco smoke case.
- Castano v. The American Tobacco Company, et al., Case No. 94-1044, United States District Court, Eastern District, Louisiana. Purported class action addiction case.
- Dunn v. RJR Nabisco Holdings Corporation, et al., Case No. 18D01-9305-CT-06, Superior Court, Delaware County, Indiana. Environmental tobacco smoke case.
- Haines v. Liggett Group, et al., Case No. 84-678, United States District Court, District of New Jersey. Cigarette smoking and health case.
- McGraw v. The American Tobacco Company, et al., Case No. 94-1707, Circuit Court, Kanawha County, West Virginia. Attorney General case.
- Moore v. The American Tobacco Company, et al., Case No. 94-1429, Chancery Court, Jackson County, Mississippi. Attorney General case.

Mr. J.D. Lee is also counsel of record in:

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hearing process for purposes of advancing their own personal and monetary interests -- interests which are wholly unrelated to this rulemaking. Plaintiffs' counsel's lack of interest in this rulemaking has consistently been demonstrated by the fact that they have routinely pursued lines of examination that are totally unrelated to this rulemaking. Their clear objective is the development of information that may be of use in their lawsuits.

We would normally welcome the opportunity to discuss the issues underlying OSHA's Proposed Rule and respond to any questions from OSHA or other interested parties regarding our submissions. However, the distortion of a legitimate administrative hearing by plaintiffs' product liability counsel, solely in furtherance of their personal and financial interests, argues against our presenting oral testimony in this rulemaking. Philip Morris remains fully prepared to meet these plaintiffs, in the courts they have selected, to litigate the claims they have alleged, pursuant to the applicable rules of civil procedure and the rules of evidence. It is not, however, appropriate for plaintiffs' counsel to attempt to litigate their product liability claims in an informal administrative hearing.

Recent events leave little doubt that plaintiffs' counsel have no intention of pursuing the development of a relevant factual record concerning this rulemaking and that their appearance at the hearings is motivated by interests wholly unrelated to these proceedings.[6]

- Huggins v. Philip Morris, et al., Case No. 1-400-94, Circuit Court, Knox County, Knoxville, Tennessee. Cigarette smoking and health case.

Mr. Daynard is listed as a counsel in Castano.

[6] OSHA Hearing, October 28, 1994, pp. 4204-4205. When asked at the OSHA hearing what kind of cases he is involved with, Mr. Motley responded:

> I am on the executive committee of the case called Castano v. American Tobacco Company. It's a proposed class action for persons addicted to tobacco pending in the federal court in New Orleans. I represent the states of West Virginia and Mississippi in cases brought to recover Medicaid costs and other costs attendant to treating those smokers who have developed illnesses. I represent two

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For example, subsequent to Mr. Ron Motley's first appearance at the OSHA hearings, his statements to the media were reported in an article in the York, Pennsylvania, York Daily Record, on October 29, 1994.[7] That article provided in part:

> 'We ruined your mayor,' crowed Ron Motley, a South Carolina lawyer who represents anti-smoking groups.
>
> He was speaking of William Althaus, who ran City Hall for 12 years and now heads a national smokers' rights group. Althaus endured a long morning of cross-examination Friday during a hearing on whether the government should restrict workplace smoking.
>
> * * *
>
> But for two months, Motley said, well-meaning opponents of smoking have been beaten up by slick tobacco industry lawyers during the OSHA hearings. Fed up, they called Motley, a plaintiff's lawyer who has a lead role in several important suits against tobacco companies.
>
> 'They decided they wanted some of our junk yard dogs, and we had a lot,' Motley said.
>
> Aware that Althaus would be a key witness, Motley hired a former state trooper from the York barracks, Ken Grossman, to dig up dirt on

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> alleged victims of lung cancer who never smoked. That's the Butler case pending in Mississippi and the Wiley case pending in Indiana. And I represent the state [sic] of Mr. Rossi, who is deceased. He was a smoker. The case is called Hanes v. Liget Myers [sic]. It's pending in the federal court in New Jersey. And I represent several other attorneys general in a consulting role who have not brought lawsuits at this time.

[7] Plaintiffs' counsel have also issued at least one press release which discusses some of their non-rulemaking objectives (see Exhibit 1 attached).

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> the former mayor. Grossman said he went through years of newspapers at the library and talked to Althaus' detractors, particularly Democrats.
>
> * * *
>
> 'The purpose was to reveal NSA for what it is,' Motley said. 'It's a group of shills for the tobacco companies.'

In addition, presumably in furtherance of their litigation objectives, plaintiffs' counsel have attempted to contact and question expert witnesses who have been requested by Philip Morris to review OSHA's Proposed Rule and to testify at OSHA's public hearings. Dr. Anthony Springall, who testified at the OSHA hearings on November 16, 1994, explained on the record that he had been contacted by telephone the week prior to his OSHA testimony by Marcia Finkelstein.[8]

Despite the fact that Dr. Springall has never testified, researched or published on the subject of asbestos, Ms. Finkelstein claimed that she was interested in employing Dr. Springall as a consultant in the area of asbestos epidemiology, and she was insistent that Dr. Springall provide a curriculum vitae immediately. At no time did Ms. Finkelstein disclose that she was preparing for the cross-examination of Dr. Springall at the OSHA hearing, or that another member of her law firm, Mr. Michael Gertler, would be cross-examining Dr. Springall. Ms. Finkelstein and Mr. Gertler are members of the Gertler, Gertler & Vincent firm in New Orleans, which has been active in tobacco product liability litigation. Dr. Springall testified that he also received a second suspicious inquiry requesting a C.V. from a "Ms. Allen" who purported to be considering writing a "British tobacco newsletter." Dr. Springall felt that these calls were attempts to gather information under false pretenses and indicated that they were of considerable concern to him.

It is a serious matter and quite troubling that product liability plaintiffs' counsel would misrepresent themselves in contacting individuals who are scheduled to testify before OSHA in an attempt to obtain information. This conduct could certainly be perceived as an attempt to harass and intimidate witnesses with the intended result that witnesses would be reluctant to appear at the hearings and offer important testimony necessary to the development

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[8] OSHA Hearing Transcript, November 16, 1994, pp. 6424-6426.

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of a complete record. These attempts to obtain information from Dr. Springall under false pretenses are of particular concern in that Dr. Springall clearly identified himself in all previous written comments to the record as having undertaken a review of the Proposed Rule at the request of Philip Morris.[9]

In at least one other instance, of which Your Honor is aware, ultra vires contacts by or on behalf of plaintiffs' counsel have contributed to the withdrawal of a witness scheduled to testify in these hearings.

II.

We are also deeply concerned about the participation of individuals with known anti-smoking views as "official" representatives of OSHA. We of course recognize the right and value of individuals' differing views on OSHA's Proposed Rule, but we question the legitimacy of having individuals with a demonstrated bias participating on the OSHA panel as "official" representatives of the agency. The agency has an obligation to conduct a fair and impartial hearing. The participation of anti-tobacco advocates on the OSHA panel is no more appropriate than if tobacco industry representatives served in an "official" capacity on that panel.

For reasons that are not disclosed by OSHA on the record, OSHA obtained the services of Mr. James Repace "on detail" from the U.S. Environmental Protection Agency. OSHA is well aware that Mr. Repace has been one of the most strident, outspoken anti-tobacco activists in the United States. Mr. Repace's "loan" from the EPA, and Mr. Repace's ongoing involvement in OSHA's rulemaking process, call into question the Department's precepts of a fair and impartial hearing.

Mr. Repace, who is now actively serving as a member of the OSHA panel present at these hearings, has an anti-tobacco involvement that is long-standing and well-documented. However, it is Mr. Repace's involvement on the OSHA panel, not his views as an individual, that is of great concern. Consider the following summary of some of Mr. Repace's activities in light of the Assistant Secretary of Labor's admonition on Monday, September 19, 1994, that "we enter these hearings with no rigid preconceptions." (OSHA Press Release, September 19, 1994):

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[9] See OSHA Hearing Transcript, November 16, 1994, at 6424-6426.

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Source: https://www.industrydocuments.ucsf.edu/docs/ftwl0000

- In 1980, even before the first major ETS health claims appeared in the scientific literature, Repace co-authored an article with A.H. Lowrey reporting on particulate matter in the air of various indoor environments such as bars, restaurants and bingo parlors, without distinguishing whether those particulates were from ETS or some other substance or activity.[10,11] On the basis of these observations, the article claimed that "indoor air pollution from tobacco smoke presents a serious risk to the health of nonsmokers . . . [that] deserves as much attention as outdoor air pollution."[12]

- In 1985, Repace co-authored (again with A.H. Lowrey) an article purporting to show that ETS was riskier than "all regulated industrial emissions combined."[13] This second article by Repace and Lowrey, which represented an attempt at quantitative risk assessment, has been severely criticized by both government and private sector scientists.[14]

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[10] A.H. Lowrey and J.L. Repace, "Indoor Air Pollution, Tobacco Smoke and Public Health," Science, Vol. 208, pp. 464-472 (1980).

[11] Subsequent research has arguably discredited both the methodology and conclusions of the 1980 Repace study. See, e.g., S. Turner, et al., "Measurements of Environmental Tobacco Smoke in 585 Offices," Env. Int., Vol. 18, pp. 18-28 (1992); C. Proctor, N. Warren, and M. Bevan, "Measurements of ETS in an Air-Conditioned Office Building," Env. Tech. Lett., Vol. 10, pp. 1003-1018 (1989).

[12] Repace and Lowrey (1980), supra note 5, at 471.

[13] J.L. Repace and A.H. Lowrey, "A Quantitative Estimate of Nonsmokers' Lung Cancer Risk From Passive Smoking," Env. Int., Vol. 11, pp. 3-22, at 12 (1985). This study was not funded or sponsored by EPA.

[14] See, e.g., A. Arundel, et al., "Nonsmoker Lung Cancer Risks from Tobacco Smoke Exposure: An Evaluation of Repace and Lowrey's Phenomenological Model," J. Env. Science and Health C4(1): 93-118 (1986); A. Arundel, et al., "Never Smoker Lung Cancer Risks from Exposure to Particulate Tobacco Smoke," Env. Int. 13: 409-426 (1987); M.D. Lebowitz, "The Potential Association of Lung Cancer with Passive Smoking," Env. Int. 13: 409-426 (1987).

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- Well before he was "loaned" to OSHA to work on the Proposed Rule, Mr. Repace worked with advocacy organizations such as the Group Against Smokers' Pollution ("GASP") and Action on Smoking and Health ("ASH").[15] As a member of the OSHA panel, he now sits in judgment of their testimony.

- Since the 1970s, Mr. Repace has also appeared as a witness in grievance proceedings regarding smoking in the workplace and testified before various legislative bodies to support governmental restrictions on smoking. Consider in this regard Mr. Repace's statements to the press in reaction to the defeat of an anti-smoking legislative proposal in Maryland in 1980:

> People aren't going to stand for this. Now that the facts are clear, you're going to start seeing nonsmokers becoming a lot more violent. You're going to see fights breaking out all over. Washington Star, April 5, 1980, p. D-1.[16]

- During the late 1980s, Mr. Repace became involved with EPA's determination to classify ETS as a Group A carcinogen. He outlined plans for a handbook designed to promote the elimination of ETS. Mr. Repace was in part responsible for two long-term projects -- an "ETS literature compendium" and an "ETS workplace smoking policy guide," -- as well as a smaller project, an "ETS

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15 Virginia Group to Alleviate Smoking in Public (Docket 10-24) and Maryland Group Against Smokers' Pollution (Docket 10-10) have both participated in this rulemaking. These are two of the organizations Mr. Motley claims to represent in these proceedings.

16 Fourteen years later Mr. Repace returned to Maryland to testify in support of smoking bans and severe restrictions. In the matter of: Prohibiting Smoking in the Workplace, Hearings Before the Occupational Safety and Health Advisory Board, Maryland Department of Licensing and Regulation, December 9, 1993, pp. 157-196 (Statement of James Repace).

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fact sheet."[17] These projects were clearly reflective of the agenda first pursued in Mr. Repace's 1980 article.

- Mr. Repace has even traveled internationally to appear at various conferences and media events to promote smoking restrictions. For example, in 1990 Mr. Repace went to New Zealand to support anti-smoking legislation in that country. Perhaps even more problematic, however, is that while Mr. Repace was actively involved as an OSHA panel member in this rulemaking, he journeyed to Paris, France, to make a presentation on environmental tobacco smoke. The abstract submitted by Mr. Repace for the October 1994 9th World Conference on Tobacco & Health states:[18]

> Passive smoking continues to be a central focus of attention for researchers, public health authorities and the general public. A very wide scientific consensus has been developing on the existence of long-term adverse effects on health (notably lung cancer) from exposure to environmental tobacco smoke (ETS); estimates of the size of these effects vary, as does the weight that different authors give to the findings from available epidemiological studies. This

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17 See, e.g., Environmental Tobacco Smoke: A Handbook for Assessment, Mitigation, and Prevention of Exposure, Revised draft Outline, June 1, 1987, James Repace, EPA, and Donald Shopland, Office of Smoking and Health of the Department of Health and Human Services (HHS); letter dated April 5, 1988 from John D. Spengler to James Repace enclosing "our Chapter on ETS"; "ETS Handbook," undated November 8, 1988, from Jim Repace, to Bob Axelrad, Joellen Lewtas, Bob Rosner, Don Shopland, suggesting a change in format for the ETS Manual Outline for Bob Rosner; and, finally, Jim Repace's Integration of Comments, Draft, Indoor Air Facts, No. 5, Environmental Tobacco Smoke, undated, which took out the statement ETS "has been linked to cancer" and substituted "It is a known cause of lung cancer and respiratory disease." Additionally, the draft Fact Sheet deleted the statement "This information sheet has been developed by the U.S. Environmental Protection Agency" in favor of the statement "This Fact Sheet is designed to answer the most often asked questions about ETS."

18 Abstract SS 8, Environmental Tobacco Smoke, R. Saracci, J.L. Repace, J. Tostain, P. Dalla-Vorgia.

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> consensus translates into measures, educational and regulatory, to protect people from involuntary exposure to ETS. These measures are discussed in respect to the occupational and general environment and in relation to their rationale (technical and economic), effectiveness and actual implementation, particularly within Europe and in the United States, with a view to their application in other areas of the world. [emphasis added]

Thus, before the majority of the scheduled testimony had been received on the OSHA Proposed Rule, Mr. Repace claimed a consensus on one of the very issues he is charged with reviewing objectively and fairly on behalf of an agency of the U.S. government.

- He also provided technical assistance to Dr. Stanton Glantz, another self-described anti-smoking activist (who, significantly, is now also appearing as an active member of the OSHA panel), in the preparation of two anti-smoking films on ETS.[19] In a 1991 letter to an EPA official from Thomas S. McFee of the Department of Health and Human Services, a request was made for Mr. Repace to continue testifying on behalf of smoking restrictions "as part of his official duties." The letter acknowledges such assistance by Mr. Repace[20] -- all of which occurred several years prior to OSHA's promulgation of the Proposed Rule.

- Long before his involvement at OSHA, and well before any testimony was tendered at OSHA, Mr. Repace had publicly stated that as many as 5,000 people in the U.S. die each year from exposure to ETS.[21]

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19 Letter dated October 11, 1988 from Stanton A. Glantz to Bob Axelrad, EPA (See Exhibit 2 attached).

20 Letter dated June 5, 1991 from Thomas S. McFee, DHHS, to F. Henry Habicht, EPA.

21 Repace articles include J.L. Repace and A.H. Lowrey, "A Quantitative Estimate of Nonsmokers' Lung Cancer Risk from Passive Smoking," Environment International, Vol. 11, pp. 3-22, 1985; Correspondence, J.L. Repace and A. Lowrey, Am. Rev. Respir. Dis. 136(5) 1987; Irvin Molotsky, "E.P.A. Study Links

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Mr. Repace's long-standing, firmly-held and publicly disclosed positions on the subject of ETS demonstrate a serious conflict-of-interest in the context of his role as a member of the OSHA panel in these proceedings. Simple fairness dictates that Mr. Repace should never have been included as an official member of the OSHA panel.[22]

Subsequent to the commencement of Mr. Repace's "on loan" involvement at OSHA, OSHA selected "a number of experts"[23] to offer testimony at the OSHA hearings in support of OSHA's rule. Not surprisingly, these witnesses included long-standing and well-documented anti-tobacco advocates such as Drs. Glantz and Judson Wells. A consideration of Dr. Glantz's anti-smoking activities is also appropriate in light of the Assistant Secretary of Labor's admonition that "we enter these hearings with no rigid preconceptions":[24]

- Dr. Glantz stated in a 1984 publication: "This collection of data . . . is leading to a consensus in the biomedical community that involuntary smoking is a significant health hazard" and "[R]elatively new studies confirm what scientific common sense suggests: . . . toxins [in ETS] affect nonsmokers who breathe them."[25] Clearly, Dr. Glantz reached conclusions regarding ETS

Deaths of Nonsmokers to Cigarettes," The New York Times, Nov. 3, 1984; C. Stevens, "Smokers' Smoke Is Risk to All-Study," USA Today, Jan. 31, 1985; J.L. Repace, "Passive Smoking Has No Place in the Workplace," Can. Med. Assoc. J, Vol. 133, Oct. 15, 1985.

22 In fact, Mr. Repace's activities have led to investigations with respect to whether his anti-smoking activities conflicted with his duties as a public employee. E. Marshall, "Tobacco Science Wars; the Industry Has Been Bullying Scientists, According to Researchers Who Lead the Campaign Against Environmental Tobacco Smoke," Science, Vol. 236, p. 250, April 17, 1987.

23 OSHA Opening Statement, September 20, 1994, at 17.

24 Assistant Secretary of Labor Joseph Dear, OSHA Press Release, September 19, 1994.

25 S.A. Glantz, "What to Do Because Evidence Links Involuntary (Passive) Smoking with Lung Cancer," West J. Med. 140: 636-637, 1987.

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exposure and disease three years before the 1986 reports of the Surgeon General and National Academy of Sciences both determined that there was insufficient evidence to support the claim that exposure to ETS presents any increased risk of heart disease. He rendered opinions on these issues almost a decade before he joined OSHA's panel in this rulemaking.

- Dr. Glantz has a long record of public statements demonstrating his commitment to the anti-smoking political agenda. While his training is in mechanical engineering rather than medicine or some other related discipline,[26] he has addressed almost every conceivable smoking-related topic, including advertising and economic issues, about which he can make no justified claim to professional expertise.

- At an April 1990 anti-smoking conference in Perth, Australia, Dr. Glantz made a series of revealing comments. First, he noted that "it's very nice to see that the same ideas that a few of us were advocating in 1983 which were viewed as so strange, radical and hopeless have now really become very mainstream."[27] A self-described "lunatic" on the issue, Dr. Glantz then excoriated the American Cancer Society for its alleged decision to terminate an employee for intemperate behavior in connection with a local smoking ordinance. "He [the employee) may be a little impolitic, which I of course view as a plus. But you know activists need [to be] rewarded[.]"[28] "I had no objection to all the people who were given awards on the first day [of the conference), but I did notice that there was not a single lunatic among them . . ."[29] He further confessed that

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26 OSHA Hearing Transcript, September 21, 1994, p. 384.

27 OSHA Hearing Transcript, September 21, 1994, p. 488, line 10-13; Speech, Stanton Glantz, 7th World Conference on Tobacco and Health, Perth, Australia, April 1990, received as Exhibit 17, p. 499, lines 5-7.

28 Speech, Stanton Glantz, 7th World Conference on Tobacco and Health, Perth, Australia, April 1990, received as Exhibit 17, p. 499.

29 OSHA Hearing Transcript, September 20, 1994, p. 495, lines 16-19.

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"[t]he main thing the science has done on the issue of ETS, in addition to help people like me pay mortgages, is it has legitimized the concerns that people have that they don't like cigarette smoke. And that is a strong emotional force that needs to be harnessed and used." Glantz concluded by stating that "we are all on a roll and the bastards are on the run and I urge you to keep chasing them."[30]

- An article published in the June 1991 issue of Trial, co-authored by Dr. Glantz and Richard Daynard, a professor at Northeastern University School of Law who chairs the anti-tobacco Tobacco Products Liability Project, unequivocally stated that "passive smoking kills about 3,700 Americans a year by inducing lung cancer" and "about 37,000 each year by inducing heart disease."[31] This demonstrates Dr. Glantz had personally reached ultimate conclusions concerning ETS and health issues long before appearing on the OSHA panel in this hearing. Mr. Daynard, as noted earlier, has appeared at the OSHA hearings on behalf of plaintiffs' product liability consortium for the purpose of examining tobacco industry witnesses.

- Dr. Glantz helped prepare a draft of the ETS Technical Compendium, an EPA project. In April 1991, before EPA had completed its own internal review of the document, EPA staff sent a draft of the compendium to several external reviewers, including Dr. Glantz. Dr. Glantz provided a copy of this internal EPA draft to an Associated Press reporter. According to the General Accounting Office, Dr. Glantz claims that his release of the report was a "mistake."[32]

- Equally disturbing was the public dissemination of the draft compendium chapter on cardiovascular disease. Dr. Glantz, one of the authors of that chapter, appeared in

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30 Speech, Stanton Glantz, 7th World Conference on Tobacco and Health, Perth, Australia, April 1990, received as Exhibit 17, p. 499.

31 S.A. Glantz and R.A. Daynard, "Safeguarding the Workplace: Health Hazards of Secondhand Smoke," Trial, June 1991.

32 Letter dated February 8, 1993, to the Honorable John D. Dingell from Richard L. Hembra, GAO.

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Boston -- with current OSHA panelist James Repace -- at the World Conference on Lung Health in late May 1990. During that appearance, Dr. Glantz gave both a presentation and news interviews on that draft chapter. Dr. Glantz used the occasion to repeat and underscore his conclusions regarding ETS issues.

- Dr. Glantz's long-standing involvement in anti-tobacco issues is further demonstrated by the activities listed on his curriculum vitae under "Public Service."[33] These include: (i) involvement in an effort to resurrect "Death in the West," a "documentary" about smoking and health; (ii) service as President, Californians for Nonsmokers' Rights; (iii) service as President, California Nonsmokers' Rights Foundation; (iv) service as President, Americans for Nonsmokers' Rights; and (v) service as President, American Nonsmokers' Rights Foundation.

While Dr. Glantz's involvement as an official OSHA witness is of serious concern in view of his demonstrated bias, OSHA may well try to contend that, bias notwithstanding, it can ask any expert it wants to testify. However, the events that transpired commencing on November 15, 16 and 17 are far more egregious and troublesome. Beginning on November 15, Dr. Glantz actually joined the OSHA panel and openly provided extensive assistance to the panel in their questions of expert witnesses appearing on behalf of the tobacco industry. In addition, Dr. Glantz personally cross-examined tobacco industry witnesses at length. When this impropriety was noted on the record, counsel for OSHA acknowledged that Dr. Glantz was formally "representing" OSHA.[34] Although several formal objections to this practice were made, OSHA nonetheless permitted Dr. Glantz to continue to cross-examine witnesses on behalf of OSHA on November 16 and 17.

III.

In addition to concerns about the OSHA panel's bias, suggested by the active involvement of Mr. Repace and Dr. Glantz, the public should also be concerned about OSHA's creation of and reliance upon its own "private docket" in developing the Proposed Rule. In response to the Agency's RFI, OSHA received over 1,200

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[33] C.V. of Dr. Stanton Glantz, submitted to the OSHA Docket Office, August 12, 1994.

[34] OSHA Hearing Transcript, November 15, 1994, p. 5840.

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separate submissions. Many were of a highly technical nature and pertained directly to scientific and technical issues associated with indoor air quality and, specifically, environmental tobacco smoke. OSHA also created another reference docket on smoking, which contained over 200 documents. In its Proposed Rule, however, OSHA cited to documents which were apparently obtained through sources other than the public comment process.

The Agency relied upon this information from other sources far more frequently than it relied upon documents in the Docket that the RFI generated. Specifically, OSHA cited to documents from other sources (referred to by OSHA as Exhibit 4, later changed to Exhibit 8) approximately 550 times, while referencing the public comments from the RFI (referred to by OSHA as Exhibit 3) only 322 times.

This disparity is even greater with respect to the sections of the Notice of Proposed Rulemaking that address environmental tobacco smoke. For example, in the "Health Effects" section, documents from sources other than public comments were cited 282 times as opposed to 25 times for the public comments from the RFI. In the "Exposure" section, OSHA cited to documents from other sources 60 times and to public comments from the RFI only four times. Incredibly, the "Significant Risk" section contained 94 citations to documents from OSHA's "private docket" as compared with only one cite to a public comment from the RFI.

IV.

In summary, we agree with OSHA's publicly stated position that the agency must be fair and unbiased in its regulatory process. OSHA obviously should neither be operating on, nor motivated by, private anti-smoking agendas. However, the facts, as discussed above, clearly call into question OSHA's ability to rein in special interest groups who are pursuing litigation and other anti-tobacco objectives, all to the detriment of a fair and impartial administrative hearing.

Just as it would be fundamentally unfair if two tobacco industry scientists were serving on the OSHA panel -- to the predictable outcry and condemnation of the anti-tobacco community -- it is fundamentally unfair to have non-OSHA personnel who are anti-tobacco activists operating as a part of the OSHA panel, under the full force of OSHA's regulatory authority.

Therefore, for reasons outlined in this letter, it is clear that our oral testimony would neither be received nor examined by OSHA with the requisite impartiality, and as such will

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not be given. However, it is our hope that the testimony that has and will be given by numerous independent scientists, as well as concerned businessmen and women, will be received and treated fairly so that a final rule can be properly developed.

Our decision not to testify does not diminish our commitment to assist OSHA in creating a complete and accurate record -- which is necessary for the development of a revised rule that fairly and objectively reflects the best evidence available to OSHA.

Respectfully submitted,

Anthony J. Andrade
Philip Morris U.S.A.

Patrick R. Tyson
Constangy, Brooks & Smith

cc: Honorable Joseph A. Dear
Susan Sherman, Esq.
OSHA Docket Office

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EXHIBIT 1

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TOBACCO INDUSTRY FRONT GROUP UNABLE TO PROVE MINORS NOT RECRUITED

Leading Tobacco Plaintiff Trial Attorneys Cross-Examine NSA Chairman

Althaus Uncover Lack of Knowledge, Refusal to Disclose

WASHINGTON, Oct 28 /PRNewswire/ -- Ness, Motley, Loadholt, Richardson & Poole issued the following:

Under blistering cross-examination by a leading trial attorney, National Smokers Alliance (NSA) Chairman William J. Althaus was unable to verify that his organization enforces its pledge not to recruit members who are under age 21, nor could he refute allegations that solicitation letters were sent to many minors.

Althaus also claimed he had no opinion on whether tobacco is harmful or nicotine is addictive, admitted he had not read an Environmental Protection Agency study he criticized, refused to disclose his organization's funding, and called his signing of an executive order banning smoking in York, Penna., when he was mayor "an example of bad executive action."

The cross-examination took place at hearings of the Occupational Safety and Health Administration (OSHA) on a proposal to restrict smoking in the workplace. Today's exchange represented the first time that the 62 law firms representing the plaintiffs in the national nicotine addiction class action lawsuit Castano v. American Tobacco Co. joined these hearings. They will do so for the remaining three month duration of the hearings on a pro bono basis.

Asked if NSA recruiters set up tables at Grateful Dead concerts, which are attended by many teenagers, and exchanged cigarette lighters for memberships, Althaus replied, "One common way to recruit members is with on-site tables." He described recruiters as independent contractors, and that while NSA has strict guidelines for recruiting members, he could not verify whether they are followed on-site.

Asked by attorney Ronald L. Motley about a Miami Herald article reporting that NSA sponsor Philip Morris mailed out thousands of letters to their customers -- some of whom are minors -- urging them to join NSA, Althaus replied that he didn't know about that. "Did [Philip Morris] turn over their mailing lists to you?" Motley asked. Althaus again answered that he didn't know.

Motley showed OSHA an executive order Althaus signed as mayor of York banning smoking in city offices. The official policy statement said, "In all cases, the right of the nonsmoker to protect his/her health and comfort will take precedence over an employee's desire to smoke." It continued, "the City should treat nicotine addiction like any other addiction by providing financial assistance for a substance abuse treatment program."

Asked about the wisdom of the policy he signed, Althaus said, "I wasn't paying any attention to the issue at the time. ... Did I sign it? Yes. Do I agree with that? No." Later under cross-examination, Althaus remarked, "I didn't know anything then. The executive order is an example of bad executive action." Motley asked, "From 1989 until the end of your term in 1994, you did

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nothing to change the message that smoking is bad for you?" "No, I did not." Althaus replied. After retiring as mayor, in part, he said at the time, for financial reasons, Althaus became NSA chairman.

'Have you ever declared smoking to be addictive?' Motley inquired. "I don't recall," Althaus answered. "Have you ever declared environmental tobacco smoke to cause disease?" Motley followed. Althaus again said, "I don't recall."

Asked by Motley if smokers have a right to be informed about what substances are in tobacco and the impact they may have on their health, Althaus replied, "I have no opinion on that." Asked if he believes smoking is addictive, Althaus said, "I have no idea."

Motley pressed Althaus to disclose NSA's sources of funding. While admitting that tobacco interests provide financial backing for NSA, Althaus refused to specify which companies contribute and how much. The NSA chairman also refused to indicate who formed the organization, saying that he "wasn't there at the beginning."

The OSHA hearings started in September and were recently extended through January. Addressing indoor air quality, the hearings are also taking comment on an OSHA proposal requiring workplaces either to prohibit smoking or establish a separately ventilated room for smokers.

Motley cross-examined Althaus and other NSA board members on behalf of the American Medical Association, American Cancer Society, American Lung Association, American Heart Association, Association of Flight Attendants, and victims of environmental tobacco smoke. He is with the Charleston, S.C., firm of Ness, Motley, Loadholt, Richardson & Poole, one of the 62 firms that are part of the Castano litigation group.

/CONTACT: David White, Bruce Kozarsky or Enid Doggett on behalf of the law firm of Ness, Motley, part of the Castano Litigation Group, at 202-223-8700/

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EXHIBIT 2

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The University of Vermont

COLLEGE OF MEDICINE DEPARTMENT OF MEDICINE
CARDIOLOGY UNIT MARY FLETCHER UNIT
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BURLINGTON VERMONT 05405
(802) 656-3734

11 October 1988

Bob Axelrad
Director, Indoor Air Division
United States Environmental Protection Agency
Washington, DC 20460

Dear Bob,

I have reviewed the draft "Indoor Air Facts #5: Environmental Tobacco Smoke" and have a few suggestions, which I have indicated on the draft.

Rather than listing me as an additional resource for information on ETS, I suggest that you add Americans for Nonsmokers' Rights, which has published several informational materials that I and others have written on the subject of ETS and Pyramid Film and Video, which has produced the films, "Secondhand Smoke" and "On the Air." I wrote both of these films and was provided technical assistance by Jim Repace of your office. I have asked Americans for Nonsmokers' Rights to send you samples of their current printed materials. Jim Repace already has copies of the two films that I mentioned.

I appreciate the opportunity to comment on this document and believe that it will represent a helpful contribution to public understanding of issues surrounding environmental tobacco smoke. I would be happy to continue working with you and assisting you in your efforts in any way I can.

Best Wishes,

Stanton A. Glantz
Visiting Professor of Medicine

SAG/np

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EX. 168

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7/25

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December 7, 1994

The Honorable John Vittone
Administrative Law Judge
U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20021-8002

OFFICE OF ADMINISTRATION
LAW JUDGES
'94 DEC -7 A9:33

Dear Judge Vittone:

As the attached press notice indicates, my client, the R. J. Reynolds Tobacco Company, regrets that it had to postpone appearing at the public hearing on OSHA's Proposed Rule on Indoor Air Quality (59 F.R. 15968, April 5, 1994). RJRT remains interested in testifying and would like to testify if it can be given an assurance that it will have the opportunity to present testimony and respond to questions in the same manner as the OSHA panel.

Truly yours,

Jeffrey L. Furr

JLF:
attachment

cc: Ms. Sue Sherman (w/attachment)

Hand Delivered
12/7/94
Jmv

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R.J. Reynolds Tobacco Company

Contact: Maura Ellis

(910) 741-6996

12/6/1994

WASHINGTON, D.C. -- R.J. Reynolds Tobacco Co. tonight decided to postpone a presentation by a panel of six RJR scientists and engineers who were scheduled to present information Wednesday through Friday at an Occupational Safety and Health Administration (OSHA) public hearing on proposed regulations concerning indoor air quality and environmental tobacco smoke in the workplace.

OFFICE OF ADMINISTRATION LAW JUDGES '94 DEC-7 09:33

The company decided to postpone its presentation after a last-minute effort by the OSHA staff and members of the anti-smoking industry (including attorneys representing litigants currently suing the tobacco industry) to unfairly deny the RJR representatives the opportunity to appear as a panel. Other parties -- including the OSHA panel -- have been allowed to make panel presentations.

This effort by OSHA and other parties to prevent Reynolds Tobacco from appearing as a panel was made less than 24 hours before the company's planned appearance. Reynolds Tobacco did not receive a commitment that it would be given equal treatment and that its representatives would be allowed to complete their testimony as a panel. The company was left with no choice but to ask for a postponement of its presentation until it could receive a firm commitment of this type.

The company said in a statement that it regretted this turn of events. It noted, however, that detailed testimony from each of the panel members has been submitted in writing to the OSHA staff and is part of the record of these proceedings.

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